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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,594	01/21/2004	Peter Hanosek	13745	4257

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07/12/2005

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EXAMINER

LYLES IRVING, CARMEN V

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,594

Applicant(s)

HANOSEK ET AL.

Examiner

Carmen Lyles-Irving

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/21/2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 21, 22 and 25 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only, and/or, cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Appropriate action is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen et al (U.S. Patent No. 6,431,177). Regarding claim 1, Sieggen teaches an extinguisher for smokers, characterized by a bar-shaped container (Figures 4a-4c) with an opening on one end that is closed by a removable closure body (1st and 2nd hollow cylindrical members in combination, see Figures 4c and 5) which consists, in full or predominantly, of a material resistant to the glowing ash of cigarettes or cigars (column 3, lines 9-12). Sieggen fails to teach an ash collector for smokers. However, it would have been obvious to one of ordinary skill in the art at the time of the invention that the invention of Sieggen is capable of performing the function of collecting ash for smokers as it the instant application. Accordingly, claim 1 is rejected.

Regarding claim 2, Siegen teaches that the closure body is made from metal (column 3, lines 9-12). Accordingly, claim 2 is rejected.

Regarding claim 4, Siegen teaches the closure body has a recess on its end facing the interior of the container (container indicated by reference number 40 in all Figures)(Figure 5). Accordingly, claim 4 is rejected.

Regarding claim 5, Siegen fails to teach the recess of the closure body tapers from its end toward the interior of the closure body. However, due to a lack of criticality and unexpected results, the tapering of the recess of the closure body is a matter of design choice. Accordingly, claim 5 is rejected.

Regarding claim 8, Siegen teaches the closure body is a plug (Figure 4c). Accordingly, claim 8 is rejected.

Regarding claim 9, Siegen teaches that the first hollow cylindrical member (the closure body) fits in the third hollow cylindrical member in a friction fit relationship. The flange (reference number 26 in Figures) acts as a seal, preventing air from entering the enclosure formed by the first and third members when slidably coupled (column 3, lines 41-43). Siegen fails to teach the outer surface of the closure body is provided with a groove, which is intended to receive a sealing ring. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to design the outer surface of the closure body with a groove that would accommodate a sealing ring thereby providing a sealing alternative to the flange used by Siegen. Accordingly, claim 9 is rejected.

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Regarding claim 10, Siegen fails to teach that the thermal capacity of the closure body is selected to ensure that the embers of a cigarette or a cigar, which is pressed against the closure body, and especially into its recesses according to claim 4, will be extinguished within a few seconds. However, it would have been obvious to one of ordinary skill in the art to design the device in the aforementioned matter so as to ensure that the cigarette is quickly extinguished in order to prevent the user of the device from insuring himself/herself or others. Accordingly, claim 10 is rejected.

Regarding claim 11, Siegen teaches that closure body is designed such that the heat from a lit cigarette is not efficiently transferred to the non-heat resistant surface of the first member and is not felt by the user. Siegen fails to expressly teach that the thermal capacity of the closure body is selected to ensure that when a cigar or a cigarette is stubbed out in the recess of the closure body, the temperature of its outer surface will not rise about 50° Celsius. However, because Siegen fails to specifically limit his teaching to any particular temperature range, it would cover all temperatures at which an object would feel warm or hot to the user. Accordingly, claim 11 is rejected.

Regarding claims 17 and 18, Siegen fails to teach any specific size of the outer diameter or length of the container. However, due to a lack of criticality or unexpected results, it would be obvious to one of ordinary skill in the art to design the container with an outer diameter and a length large enough to easily accommodate the entire length of the cigarette or cigar, but small enough so that the device would not be bulky and awkward. Accordingly, claims 17 and 18 are rejected.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen as applied to claims 1 and 2 above, and further in view of Lustbader (U.S. Patent No. 3,405,719). Sieggen fails to teach any particular metal out of which the closure body would be made. However, Lustbader teaches a device for retaining ashes (an ashtray) that is made from a metal with a high thermal conductivity, such as aluminum or brass. Lustbader fails to teach a closure body being made from a metal with a high thermal conductivity. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to take the teaching of Sieggen (a bar-shaped container that may be used as an ash collector) and combine it with the teaching of Lustbader to design an ash collector with a closure body that is made from a metal with high thermal conductivity, such as an aluminum, copper, or brass because high thermally conducting metals will better resist the heat of the ashes coming into contact with the container and the closure body. Additionally, the use of a closure body keeps the ashes in the container. Accordingly, claim 3 is rejected.

Regarding claims 13, 14 and 15, Lustbader teaches the container is made from aluminum, which is a metal suited from deep-drawing (column 3, lines 17-18).

Accordingly, claims 13-15 are rejected.

Regarding claim 16, Lustbader teaches the container is a molded plastic part (column 3, lines 19-21). Accordingly, claim 16 is rejected.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen as applied to claim 1 above, and further in view of Nicotra (U.S. Patent No. 5,862,809). Sieggen fails to teach that the recess in the closure body (a snuffer) has a

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particular shape. Nicotra teaches the use of a snuffer that is of a bowl or convex shape, preferably of a truncated cone (column 2, lines 38-43). Nicotra fails to teach that the snuffer is in the closure body. However, it would have been obvious to one of ordinary skill in the art to combine the teachings of Sieggen with the teachings of Nicotra to design a ash collector with a closure body that is used as a cigarette/cigar snuffer. Moreover, it would have been obvious to design the snuffer or closure body with a shape that would be most effective in extinguishing the cigarette or cigar whether concave or conical in shape. Accordingly, claims 6 and 7 are rejected.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen as applied to claim 1 above, and further in view of Herrmann (U.S. Patent No. 5,499,634). Sieggen teaches a clip attached to the container. Sieggen fails to teach a clip attached to the closure body. However, Herrmann teaches a clip attached to the closure body or cap. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Sieggen with the teaching of Herrmann to attach the clip to the closure body of the ash container so that the ash container could be upright at all times so that when the container is opened the ashes would not come out of container onto the user. Accordingly, claim 12 is rejected.

Claims 19, 20, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen as applied to claim 1 above, and further in view of Kojima (U.S. Patent No. 4,996,995). Regarding claim 20, Sieggen fails to teach an ash collector comprising an integrated flashlight. However, Kojima teaches an ashtray, which has a light means, i.e. an integrated flashlight. It would have been obvious to one

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of ordinary skill in the art at the time of the invention to have combined the teachings of Sieggen with the teaching of Kojima to make an ash collector that can be easily used in a dimly-lit place (column 1, lines 38-39). Accordingly, claim 20 is rejected.

Regarding claims 19 and 21, Sieggen fails to teach that in addition to a chamber intended to collect ashes the ash collector comprises second chamber that is accessible from the end of the container opposite the closure body. However, it would have been obvious to one of ordinary skill in the art at the time of invention to make the container such that it would have a separate compartment for collecting ashes and a separate compartment for the flashlight so that the flashlight would not be harmed or affected by the cigarette/cigar ashes. Accordingly, claims 19 and 21 are rejected.

Regarding claim 22, Kojima teaches an ashtray with a light means including a light bulb. Kojima fails to teach that the end of the container opposite the closure body is provided with a sleeve which is detachably connected with the container. However, it would have been obvious to one of ordinary skill in the art at the time of the invention for the sleeve to be detachably connected so that the bulb may be changed or replaced. Accordingly, claim 22 is rejected.

Regarding claim 23, due to a lack of criticality and unexpected results, the sleeve further accommodating a reflector and a glass pane closing of the sleeve is a matter of design choice. Accordingly, claim 23 is rejected.

Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sieggen as applied to claim 1 above, and further in view of Hernlein (U.S. Patent No. 5,605,226). Regarding claim 24, Sieggen fails to teach the ash collector comprising an

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integrated cigarette lighter. However, Hernlein teaches that ashtrays or ash collectors may be combined in one device with other smoker's accessories, such as cigarette lighters. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Sieggen with the teaching of Hernlein in one appliance as a matter of convenience to the smoker (column 1, lines 24-32).

Accordingly, claim 24 is rejected.

Regarding claim 25, Sieggen and Hernlein fail to teach the cigarette lighter provided in the second chamber. However, it would have been obvious to one of ordinary skill in the art at the time of invention to make the container such that it would have a separate compartment for collecting ashes and a separate compartment for the cigarette lighter so that the cigarette lighter would not be harmed or affected by the cigarette/cigar ashes. Accordingly, claim 25 is rejected.

Regarding claim 26 and 27, Sieggen fails to teach that a removable cap that is pivotally mounted on the container protects the cigarette lighter. However, due to a lack of criticality and unexpected results, the cigarette lighter being protected by a removable cap that is pivotally mounted on the container is a matter of design choice. Accordingly, claims 26 and 27 are rejected.

Conclusion

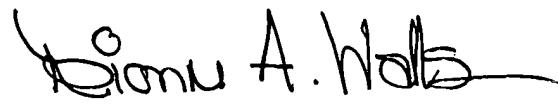
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dworman et al (U.S. Patent No. 4,878,867) (shows recess in the closure body has a conical shape).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carmen Lyles-Irving whose telephone number is (571) 272-2945. The examiner can normally be reached Monday through Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CLI
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PRIMARY EXAMINER